

JAN 17 2006**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOHNATHAN LUTHER HILL,

Defendant - Appellant.

No. 05-30254

D.C. No. CR-95-00174-JET

MEMORANDUM^{*}

Appeal from the United States District Court
for the Western District of Washington
Jack E. Tanner, Senior District Judge, Presiding

Submitted January 9, 2006^{**}

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Johnathan Luther Hill appeals pro se from the district court's order denying his motion for writ of error audita querela. We have jurisdiction pursuant to 28 U.S.C. § 1291.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We affirm the district court's order because Hill's conviction became final in 1999, and this court has held that *United States v. Booker*, 543 U.S. 220 (2005), does not apply retroactively to convictions that became final prior to its publication. *See United States v. Cruz*, 423 F.3d 1119, 1121 (9th Cir. 2005) (per curiam).

AFFIRMED.